IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR
JUDGMENT

Ratan lal Vs. Civil Judge (Junior Division), Nathdwara & Anr.

(S.B.Civil Writ Petition No. 1807/2007)

Date of judgment:- 26.10.2007

HON'BLE MR.JUSTICE SANGEET LODHA

Mr. Manish Shishodia, for the petitioner.
Ms. Rekha Borana,for the respondent.

BY THE COURT:-

This writ petition is directed against order dated 14.2.2007 passed by the Civil Judge (Junior Division) Nathdwara, in Civil Suit No. 58/2004 whereby, a preliminary issue regarding the jurisdiction of the court to try the suit, has been decided in favour of the plaintiff–respondent no.2 and against the defendant– petitioner.

The brief facts of the case are that the plaintiff–respondent no. 2 preferred a suit for eviction, arrears of rent, possession and compensation before the learned trial court against the defendant-petitioner. The defendant–petitioner contested the suit by filing the written statement. During the pendency of the suit the Rajasthan Rent Control Act, 2001 (in short "the Act of 2001", hereinafter) was amended vide Rajasthan Rent Control (Second Amendment) Act, 2005

whereby, in sub-section (2) of Section 1, the expression "having a population exceeding 50,000 as per 1991 census" has been deleted, and this amendment has been brought into effect vide notification dated 20.02.2006 with immediate effect. In view of the aforesaid amendment in the Act of 2001, the defendant–petitioner preferred an application before the learned trial court seeking leave to amend his written statement and to add a new para no. 26 raising a question regarding jurisdiction of the trial court to try the suit . The application seeking amendment preferred by the defendant-petitioner was allowed by the learned trial court vide order dated 18.07.2006. Accordingly, the defendant – petitioner filed amended written statement and incorporated a new para no. 26 as prayed for in the said amendment application.

On the basis of the pleading of the parties, the learned trial court framed the issues including the issue with regard to the jurisdiction of the trial court to try the suit. The relevant issue no. 7 framed by the learned trial court reads as under:

> "(7) आया दि. 22.2.06 से राजस्थान किराया नियंत्रण अधि. 2001 लागू हो जाने से उक्त वाद न्यायालय के क्षेत्राधिकार से परे हैं।"

The learned trial court directed that the issue no. 7 shall be decided first as preliminary issue. After hearing both the parties, the learned trial court vide order impugned in the present writ petition, decided the said issue against the

defendant – petitioner and in favour of the plaintiff - respondent no. 2. The learned trial court arrived at the conclusion that no Rent Control Act was in force during the intervening period of coming into force of the Act of 2001 and repeal of Rajasthan Premises (Control of Rent and Eviction) Act, 1950, by the Act of 2001, therefore, the suit preferred by the plaintiff under the Transfer of Property Act, 1882 is maintainable and it has jurisdiction to try the suit.

It is contended by the learned counsel for the plaintiff - respondent that the questions raised in the writ petition are not required to be gone into inasmuch as the order passed by the learned trial court is sustainable on other ground not argued before the learned trial court. The learned counsel contended that even after coming into force of the amended sub-section(2) of Section 1, it cannot be said that the Act of 2001 has become applicable to all the municipal areas automatically. The learned counsel urged that the Act of 2001 shall become applicable to any municipal area only after issuance of the notification by the State Government in the official gazette. In this regard the learned counsel has relied upon the judgment of this court dated 13.08.2007 rendered in S.B. Civil Writ Petition No. 691/2007. It is not in dispute that no such notification has been issued by the State Government extending the Act of 2001 to the municipal area of the town Nathdwara.

It is not disputed by the learned counsel appearing on behalf of the petitioner that the matter stands covered by the decision of this Court supra.

Accordingly, the writ petition is hereby dismissed. No order as to costs.

(SANGEET LODHA),J.